

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0207
GROSS INCOME TAX
For Years 1992 AND 1993**

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ISSUES

I. Gross Income Tax – Products sold to Out-of-state Businesses

Authority: 45 IAC 1-1-119

Taxpayer protests assessment on sales to out-of-state company.

II. Gross Income Tax – Taxation of sales into Indiana

Authority: 45 IAC 1-1-49; 45 IAC 1-1-120

Taxpayer protests assessment on subsidiary corporation's sales into state.

STATEMENT OF FACTS

Taxpayer corporation is located in Indiana and is a manufacturer of truck trailers. The sales at issue are to out-of-state purchasers which are out-of-state corporations and which operate a common carrier business. When the taxpayer completes the manufacture of a purchaser's order, it notifies the purchaser that it is ready for delivery. The purchaser has the responsibility to arrange for its pick-up and delivery to its location outside Indiana. The purchaser sends a truck to pick-up the trailer, which it does without any further involvement by the taxpayer. Taxpayer has an additional subsidiary corporation in Illinois that ships products from its Illinois location to Indiana purchasers. Taxpayer is protesting assessments on both activities.

I. Gross Income Tax – Products sold to Out-of-state Businesses

DISCUSSION

Taxpayer argues that 45 IAC 1-1-119 provides that goods shipped from a seller's location in Indiana to a buyer located outside of Indiana, and such goods are picked up in Indiana by common carrier, is a nontaxable outshipment of goods. Taxpayer relies on its customer's status as a common carrier for this argument. However, 45 IAC 1-1-119(2) [Taxable outshipments](c) states:

Sales to nonresidents where the buyer picks up the goods within the State but does not inspect them until after transport to an out-of-state destination.

Taxpayer, while selling to common carriers, is not shipping its products by common carriers. The taxpayer's customers are trucking companies (i.e. common carriers). Therefore, when taxpayer's customer picks up the trailers they may well be a common carrier in general, but they are acting on their own behalf (not for a third party) and are not acting as a common carrier at that time. The transaction is completed when the buyer takes possession of the product in this state; consequently, the sale is taxable.

FINDINGS

The taxpayer's appeal is denied.

II. Gross Income Tax – Taxation of sales into Indiana

DISCUSSION

Taxpayer was assessed tax based a business situs in Indiana as defined by 45 IAC 1-1-49. In light of 45 IAC 1-1-120 (1)[Nontaxable in-shipments] (b) which states:

Sales made by a nonresident who has a business situs or business activities within the State, but the situs or activities are not significantly associated with the sales, and the goods are shipped directly to the buyer upon receipt of a prior order.... For the sales to be considered as nontaxable under this rule, they must be initiated, negotiated, and serviced by out-of-state personnel, and contact with the Indiana business situs or with employees operating within the State must be no more than incidental.

As taxpayer notes in the protest, its subsidiary has no property or payroll in Indiana and its only activity in Indiana is the solicitation of orders by its salesmen. These contacts are insufficient to establish a business situs for the subsidiary.

FINDINGS

Taxpayer protest sustained.

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